

AMENDMENTS TO THE DRAWINGS

Figures 7 and 8 – Please change the label from “Related Art” to “Prior Art”.

Attachment: Replacement Sheet

REMARKS

Claims 1-20 remain pending in the present application. Claims 1, 10 and 11 have been amended. Claims 16-20 are new. Basis for the amendments and new claims can be found throughout the specification, claims and drawings originally filed.

SPECIFICATION

The specification at page 1, lines 3-5 attempts to incorporate by reference to a foreign-language document. The incorporation of essential material in the specification by referenced to an unpublished U.S. application, foreign application or patent, or to a publication is improper.

The Examiner has objected to the incorporation by reference of the foreign application which is the priority application for this U.S. patent application. Pursuant to MPEP § 2163.07, where a non-English foreign priority document under 35 U.S.C § 119 is of record in the application file, Applicants may not rely on the disclosure of that document to support correction of an error in the pending application. *Ex parte Bondiou*, 132 U.S.P.Q. 356 (Bd. App. 1961). This prohibition would apply regardless of the language of the foreign priority documents because a claim for priority is simply a claim for the benefit of an earlier filing date for subject matter that is common to two or more applications, and does not serve to incorporate the content of the priority document in the application in which the claim for priority is made. This prohibition does not apply in a situation where the original application is in a non-English language (37 CFR 1.52(d), or where the original application explicitly incorporates a non-English language document by reference. (Emphasis added). Applicants believe that all essential material in the foreign application

has been included in the specification of the U.S. Application. Therefore, pursuant to the Examiner's requirement, Applicants have deleted this incorporation. Applicants reserve the right to correct an error in the present Application should prosecution of the Application identify an error of which Applicants are not aware. Withdrawal of the objection is respectfully requested.

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. Applicants have amended Claims 10 and 11 to overcome the objection. Withdrawal of the objection is respectfully requested.

DRAWINGS

The drawings are objected to for informalities. Enclosed is an amended drawing where Figures 7 and 8 are labeled "Prior Art". Withdrawal of the objection is respectfully requested.

REJECTION UNDER 35 U.S.C. § 102

Claims 11 and 15 are rejected under 35 U.S.C. § 102(b) as being anticipated by Ohkura, et al. (U.S. Pat. No. 6,405,819). Applicants respectfully traverse this rejection.

The Examiner has identified a cover member (item "A" in the marked up version of Figure 3 provided by the Examiner). Item "A" is considered by the Examiner as being a sectional view of the upper cross-member 44 shown in Figure 7. Applicants disagree with this interpretation. It is Applicants position that item "A" is not a sectional view of upper cross-member 44.

Referring to Figure 11 of Ohkura, it illustrates lower cross-member 41 as being in front of side stays 43 which are in front of upper cross-member 44. Figure 11 agrees with this where side stays 42 are attached to upper cross-member 44 and then side stays 42 curve forward to engage lower cross member 41. Clearly, lower cross-member 41 is in front of upper cross-member 44. Figure 12 of Ohkura shows radiator 5 as being positioned in front of side stay 43 and thus radiator 5 has to be positioned in front of upper cross-member 44 since Figure 11 illustrates side stays 43 as being even with upper cross-member 44 at its top and in front of upper cross-member 44 at its bottom.

Thus, neither upper cross-member 44 or center stay 42 extend in front of radiator 5 as illustrated in Figure 3. Applicants are unable to identify any component in the other figures that corresponds to item "A". Figure 14 supports this interpretation since it shows radiator 5 as being positioned on lower cross-member 41 which as shown in Figure 11 is in front of upper cross-member 44. Figure 10 (a front view) also supports this interpretation where in Figure 10, center stay 42 is illustrated as being behind radiator 5 (note the dashed lines).

Applicants have amended Claim 1 to define that the cover member extends over substantially the entire width of the tank. Clearly, there is no disclosure in Ohkura which extends over the width of the tank and between the tank and the opening.

Thus, Applicants believe Claim 11, as amended, patentably distinguishes over the art of record. Likewise, Claim 15 that depends from Claim 11 is also believed to patentably distinguish over the art of record. Reconsideration of the rejection is respectfully requested.

REJECTION UNDER 35 U.S.C. § 103

Claims 1 and 8-10 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Ohkura, et al. (U.S. Pat. No. 6,405,819). Claims 2-4 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Ohkura, et al. (U.S. Pat. No. 6,405,819) in view of Ide, et al. (U.S. Pat. No. 4,485,882). The above discussion regarding Ohkura applies here also. Claim 1 has been amended the same as Claim 11.

Thus, Applicants believe Claim 1, as amended, patentably distinguishes over the art of record. Likewise, Claims 2-4 and 8-10 which ultimately depend from Claim 1 are also believed to patentably distinguish over the art of record. Reconsideration of the rejection is respectfully requested.

Claims 12 and 14 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Ohkura, et al. (U.S. Pat. No. 6,405,819) in view of Ide, et al. (U.S. Pat. 4,485,882). Claims 12 and 14 ultimately depend from Claim 11. As discussed above, Claim 11 has been amended and is now believed to patentably distinguish over the art of record. Thus, Claims 12 and 14 are also believed to patentably distinguish over the art of record. Reconsideration of the rejection is respectfully requested.

REJOINDER

Applicants respectfully request the rejoinder of withdrawn Claims 5-7 and 13.

NEW CLAIMS

New Claims 16 and 17 are dependent claims which Applicants believe properly further limit Claims 1 and 11, respectively, Claim 18 is a new independent claim which

defines the cover as extending above a second heat exchanger. Claims 19 and 20 are dependent claims which Applicants believe properly further limit Claim 18. Applicants believe Claims 16-20 read on the elected species.

CONCLUSION

It is believed that all of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicants therefore respectfully request that the Examiner reconsider and withdraw all presently outstanding rejections. It is believed that a full and complete response has been made to the outstanding Office Action and the present application is in condition for allowance. Thus, prompt and favorable consideration of this amendment is respectfully requested. If the Examiner believes that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at (248) 641-1600.

Respectfully submitted,

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